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Attorneys for GitHub, Inc. and Microsoft Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

J. DOE 1, et al.,
Individual and
Representative Plaintiffs,
v.
GITHUB, INC., et al.,
Defendants.

Case No. 4:22-cv-06823-JST
Consolidated with Case No. 4:22-cv-07074-JST

**DECLARATION OF ANNETTE L.
HURST IN SUPPORT OF DEFENDANTS
GITHUB AND MICROSOFT'S MOTIONS
TO DISMISS OPERATIVE COMPLAINT
IN CONSOLIDATED ACTIONS**

Date: May 4, 2023
Time: 2:00 p.m.
Courtroom: 6, 2d Floor
Judge: Hon. Jon S. Tigar

Complaint Filed: December 7, 2022

AND CONSOLIDATED ACTION

1 I, Annette L. Hurst, hereby declare:

2 1. I am an attorney at the law firm of Orrick, Herrington & Sutcliffe LLP, counsel of
3 record for Defendants GitHub, Inc. and Microsoft Corporation in this action. I am a member of
4 the California State Bar and am admitted to practice before this Court. I have personal
5 knowledge of the facts stated in this declaration unless otherwise stated, and if called to testify to
6 those facts, I could and would competently do so.

7 2. Attached as **Exhibit 1** is a true and correct copy of a newsletter dated October 17,
8 2022, that I am informed and believe was authored by Plaintiffs' counsel Matthew Butterick and
9 sent on that date. David Fuad, one of my colleagues at Orrick, is a subscriber in his personal
10 capacity to Mr. Butterick's newsletter regarding typefaces and in that capacity he received this
11 communication announcing Mr. Butterick's investigation regarding Copilot.

12 3. Attached as **Exhibit 2** is a true and correct copy of a printout of Mr. Butterick's
13 website, titled "GitHub Copilot Investigation," available at <https://githubcopilotinvestigation.com>,
14 printed on March 29, 2023 at 4:25 PM. As indicated on page 1 of Exhibit 1, described above, Mr.
15 Butterick published this website on October 17, 2022.

16 4. I am informed and believe and thereupon state that the document attached as
17 **Exhibit 3** is a true and correct copy of Mr. Butterick's newsletter dated November 3, 2022, also
18 provided by my colleague David Fuad.

19 5. Attached as **Exhibit 4** is a true and correct copy of a printout of another website
20 authored by Mr. Butterick, titled "GitHub Copilot litigation," available at
21 <https://githubcopilotlitigation.com>, printed on March 29, 2023 at 4:32 PM. As shown on the first
22 page, the first article published to this website is dated November 3, 2022.

23 6. Attached as **Exhibit 5** is a true and correct copy of a letter from Annette Hurst to
24 Joseph Saveri, dated January 18, 2023.

25 7. Beginning in November and early December when we first started communicating
26 with Plaintiffs' counsel, I raised the issue of the anonymity of the Plaintiffs and asked what was
27 the basis for them to proceed anonymously. When we were negotiating the stipulation to
28

1 consolidate the actions, I proposed a stipulation that the proceedings be consolidated and that
2 Plaintiffs would file an amended and consolidated operative complaint in which they would also
3 name themselves. After we reached an agreement to consolidate the actions but could not reach
4 an agreement that Plaintiffs would amend either of their complaints, we continued to negotiate
5 over the anonymity issue. Over the entire course of these negotiations, we met on video
6 conference with Travis Manfredi at least twice in which we discussed the issue. We asked *why*,
7 and they offered no explanation. Throughout numerous communications over several months in
8 the form of e-mails, letters, and video calls, Plaintiffs' counsel never disclosed the existence or
9 contents of the three nasty emails sent to Mr. Butterick as the basis for Plaintiffs' request to
10 proceed anonymously. The first time Plaintiffs' counsel disclosed these three emails to us was in
11 connection with the filing and service of Plaintiffs' Oppositions to the Motions to Dismiss. *See*
12 ECF No. 68.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct. Executed on this 6th day of April, 2023 in San Francisco, California.

15
16
17 By: /s/ Annette L. Hurst
ANNETTE L. HURST